

64 65

THE K I N G S PREROGATIVE, AND THE Subjects Privileges ASSERTED According to Law and Reason.

By a Person of Honour



L O N D O N,

Printed in the Year 1680. 120. Jan.
79

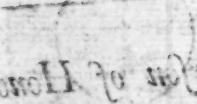
THE
KELLOGG
MFG. CO.
AND THE
KELLOGG

Wheat Flakes

are the best

According to

the  company

the  company

WHEAT FLAKES
WHEAT FLAKES
WHEAT FLAKES

FOUND

Printed in the U.S.A. 1885

The King's
PREROGATIVE
AND
Subjects Privileges
ASSERTED.

THE Law of this Land hath three Grounds. First *Custom*, Secondly *Judicial Records*, Thirdly *Acts of Parliament*. The two latter are but Declarations of the *Common Law* and *Custom* of the Realm, touching *Royal-Government*. And this Law of *Royal-Government*, is a *Law-Fundamental*.

The Government of this Kingdom by a *Royal Sovereign*, hath been as ancient as History is, or the Memorial of any time; what Power this *Sovereignty* alwaies had and used in *War* and *Peace* in this Land, is the Scope of this Discourse; That *Usage* so practised makes therein a *Fundamental Law*, and the *Common Law* of the Land is common *Usage*. *Plowd. Comment.* 195.

For the first of our Kings since the *Norman Conquest*, the first *William*, second *William*, *Henry the First*, *Stephen*, *Henry the Second* and *Richard the First*, the *Customs* of the Realm, touching *Royal Government*, were never questioned? The said Kings enjoyed them in a full Measure. In King *John's* time the *Nobles* and *Commons* of the Realm conceiving that the ancient *Customs* and *Rights* were violated, and thereupon pressing the said King to allow them in the seventeenth of *King John*, the said *Liberties* were by *King John* allowed, and by his Son *Henry the Third*, after in the ninth year of his Reign confirmed, and are called *Magna Charta*, and *Charta de Foresta*, declared four hundred twenty two Years since by the said *Charters*.

Now Refs to be considered, after the Subjects had obtained their *Rights* and *Liberties*; which were no other than their ancient *Customs* (and the fundamental *Rights* of the King as *Sovereign* are no other.) How the *Rights* of *Sovereignty* continued in Practise from *Henry the Third's* time untill this present Parliament of the third of November 1640, for before *Henry the Third's* Time, the *Sovereignty* had a very full Power.

Rex habet Potestatem & Jurisdictionem super omnes qui in Regno suo sunt, ea quae sunt Jurisdictiones & Facta ad nationem pertinent nisi ad Regiam Dignitatem, habet enim coercitionem, ut Delinquentes puniat & coerciat; This proves where the Supreme Power is.

A *Delinquent* is he who adheres to the King's Enemies. *Com. Sur. Littl. 261.*
This shews who are *Delinquents*.

The King's
Prerogative is
a principal
part of the
Common Law
Com. Littl. 344.

THE
NAME
OF THE
VILLAGE

AND THE

NAME OF THE VILLAGE

AS IT IS

According

to the
name

of the village

is the name

FOUND

Printed in the Year 1880 [or 1881]

The King's PREROGATIVE AND Subjects Privileges ASSERTED.

TH E Law of this Land hath three Grounds. First *Custom*, Secondly *Judicial Records*, Thirdly *Acts of Parliament*. The two latter are but Declarations of the *Common Law* and *Custom* of the Realm, touching *Royal-Government*. And this Law of *Royal-Government*, is a *Law-Fundamental*.

The Government of this Kingdom by a *Royal Sovereign*, hath been as ancient as History is, or the Memorial of any time; what Power this *Sovereignty* alwaies had and used in War and Peace in this Land, is the Scope of this Discourse; That *Usage* so practised makes therein a *Fundamental Law*, and the *Common Law* of the Land is common *Usage*. *Plowd. Comment.* 195.

For the first of our Kings since the *Norman Conquest*, the first *William*, second *William*, *Henry the First*, *Stepben*, *Henry the Second* and *Richard the First*, the *Customs* of the Realm, touching *Royal Government*, were never questioned. The said Kings enjoyed them in a full Measure. In King *John's* time the *Nobles* and *Commons* of the Realm conceiving that the ancient *Customs* and *Rights* were violated, and thereupon pressing the said King to allow them in the *Seventeenth* of *King John*, the said *Liberties* were by King *John* allowed, and by his Son *Henry the Third*, after in the ninth year of his Reign confirmed, and are called *Magna Charta*, and *Carta de Foresta*, declared four hundred twenty two Years since by the said Charters.

Now *Rights* to be considered, after the *Subjects* had obtained their *Rights* and *Liberties*, which were no other than their ancient *Customs* (and the fundamental *Rights* of the King as *Sovereign* are no other.) How the *Rights* of *Sovereignty* continued in Practice from *Henry the Third's* time until this present *Parliament* of the third of November 1640, for before *Henry the Third's* Time, the *Sovereignty* had a very full Power.

Rex habet Potestatem & Jurisdictionem super omnes qui in Regno suo sunt, ea sunt Jurisdictiones & Pacts ad nationem pertinent nisi ad Regiam Dignitatem, habet etiam coercionem, ut Delinquentes puniat & coercet. This proves where the Supreme Power is.

A Delinquent is he who adheres to the King's Enemies. *Com. Sur. Littl.* 261. This shews who are Delinquents.

The King's
Prerogative is
a principal
part of the
Common Law
Com. Littl. 344.

Sext. 3. Bract. ibid. *Omnis sub Rege, & ipse sub nullo nisi tantum Dco, non est inferior sibi Subiectis, non parem habet in Regno suo.* This shews where the Supreme Power is.

*Bracton lib. 5. tract. 3. de de-
faltis cap. 3. Bracton. lib. 3.
cap. 7.* *Rex non habet superiorem nisi Deum, satis habet ad placitum quod Deum expectat ultorem.* This shews where the Supreme Power is.

Treasons, Fellowies, and other Pleas of the Crown, are *propriae causa Regis.* This shews the same Power.

By these Passages it doth appear what the Custom was for the Power of Sovereignty before that time; the Power of the Militia, of coining of Money, of making Leagues with Foreign Princes, the Power of Pardonning, of making of Officers, &c. All Kings had them, the said Powers have no Beginning.

Edw. 1. Com. sur. Littl. 85. Liege Homage every Subject owes to the King (viz.) *Faith de Membro, de vita, de terreno Honore,* the Form of the Oath *inter vetera Statuta* is set down; We read of no such, or any Homage made to the two Houses, but frequently of such made by them.

7 Ed. 1. Statutes at large fol. 42. It is declared by the Prelates, Earls, Barrons and Commonalty of the Realm, that it belongeth to the King and his Royal Segniory, straitly to defend Force of Armour and all other Force against the Kings Peace, at all times when it shall please him, and to punish them that shall do contrary, according to the Law and Usage of the Realm, and hereunto they are bound to aid their Sovereign Lord, at all Seasons when Need shall be. Here the Supreme Power in the time of Parliament, by both Houses, is declared to belong to the King.

7 Ed. 2. 4 pars inclus. 14. At the beginning of every Parliament, all Arms are, or ought to be forbidden to be born in *London, Westminster, or the Suburbs.* This condemns the Multitudes coming to *Westminster*, and the Guards of armed men.

*1 Ed. 2. de Mil-
itibus.* All who held by Knights Service; and had twenty pounds *per annum*, were distrainable *ad Arma militaria suscipienda.* This agrees with the Records of ancient time, continued constantly in all Kings times, but at this Parliament 3. November 1640. The King, out of his Grace discharged this Duty, which proves that the Power of War and Preparation thereto, belongs not to the two Houses, but only to the King.

Ed. 3. Calvin's Case Cook 1.7. fol. 11. The two *Spencers* in Ed. 2. time, hatched (to cover their Treason) this damnable and damned Opinion (viz.) That Legiance was more by reason of the Kings Politique Capacity then of his Person, upon which they inferred these execrable and detestable Consequences. First, if the King demeaned not himself by reason in the Right of his Crown, his Lieges are bound by Oath to remove him. Secondly, seeing the King could not be removed by Suit of Law, it was to be done by Force. Thirdly, that his Lieges be bound to govern in Default of him.

All which Tenets were condemned by two Parliaments, the one called *exilium Hugonis* in Edward the Second's Time; the other by 1 Ed. 3. cap. 2. All which Articles against the *Spencers* are confirmed by this last Statute, the Articles are extant in the book called *vetera Statuta.* The Separation of the Kings Person from his Power, is the Principal Article condemned, and yet all these three damnable, detestable, and execrable Consequents are the Grounds whereupon this present time replies, and the Principles whereupon the two Houses found their Cause.

Plowdon Com. 322. 27. affl. 49. The Villain of a Lord, in the Presence of the King, cannot be seized, for the Presence of the King is a Protection for that time to him: This shews what Reverence the Law gives to the Person of a King.

33 Ed. 3. ayds de Roy. 103. Fitz. *Reges, sacro oleo uncti sunt capaces spiritualis Jurisdictionis.* But the two Houses were never held capable of that Power.

Rex est persona mixta cum sacerdote, habet Ecclesiastica & Spiritualia Jurisdictionem. This shews the Kings Power in Ecclesiastical Causes.

The Lands of the King are called in Law, *patrimonium sacrum*. The Houses should not have meddled with that Sacred Patrimony.

The King hath no Peer in his Land, and cannot be judged: *ergo* The Two Houses are not above him.

The Parliament of 15. Ed. 3. was repealed, for that it was against the Kings Laws and Prerogative 4. pars *instit.* fol. 52. This shews clearly the Propositions sent to Newcastle, ought not to have been presented to His Majesty, for that they are contrary to the Laws, and His Prerogative.

The Lords and Commons cannot assent in Parliament to any thing that tends to the Disinherison of the King and his Crown, to which they are sworn. This condemns the said Propositions likewise.

To depose the King, to imprison him, untill he assent to certain demands, A War to alter the Religion established by Law, or any other Law, or to remove Counsellors, to hold a Castle or Fort against the King, are Offences against that Law declared to be Treason by the Resolutions herein after mentioned. By that Law men are bound to aid the King when War is levyed against him in his Realm. King, in this Statute must be intented in his Natural Body and Person that only can die; for to Compas his Death, and declare it by overt Act is declared thereby Treason, To encounter in Fight, such as come to aid the King in his Wars, is Treason.

Compassing of the Queens Death, of the Kings eldest Son, to Coin his Money, to counterfeit his Great Seal, to levy War against him, to adhere to such as shall so do, are declared by that Act to be High Treason. This Statute cannot refer to the King in his Politick Capacity, but to his Natural, which is inseparable from the politick: for a Body Politick can have neither Wife nor Child, nor levy War, nor do any Act but by the Operation of the Natural Body. A Corporation or Body politick hath no Soul or Life, but is a Fiction of the Law, and the Statute meant not fictitious Persons, but the Body Natural conjoined with the Publick which are inseparable.

The Clause in that Act, that no man should sue for Grace or Pardon for any Offence Condemned, or Forfeiture given by that Act, was repealed by a subsequent Act in 21 R. 2. holden unreasonable, without Example and against the Law and Custome of the Parliament. This condemns the Proposition for disabling the King to Pardon. 4. pars *instit.* fol. 42. The Act of 11. R. 2. so much urged by the other side, was an Act to which the King consented, and so a perfect Act; yet note, the Army then about the Town: Note that that Law is against private persons, and by the 3. cap. thereof, the Treasons there declared are declared to be new Treasons made by that Act, and not to be drawn to example, it was abrogated 21 R. 2. and revived by an Usurper 1 H. 4. to please the people, and by the tenth Chap. thereof, Enacts that nothing shall be Treason, but what is declared by 25 Ed. 3.

The Regality of the Crown of *England* is immediately subject to God and to none other. Plain words, shewing where the Supreme Power is.

The Commission of Array is in Force, and no other Commission Rot. Parlm. 5 H. 4. num. 24. an Act not Printed, this Act was repealed by 4 & 5. P. & M. cap. 2. This is repealed by the Act of 1 Jacobi, and so it is of force at this day, for the repealing Statute is repealed, 4. pars *instit.* fol. 51. & 125. published since this Parliament, by the desire of the House of Commons, their Order is Printed in the last leaf of the Commentaries upon *Magna Charta*.

A Book allow. Sir Edward Cook, by their Party is holden for the Oracle of the Law, who
ed by Sir Nat. wrote the said fourth part, in a calm and quiet time, and I may say, when
there was no Need to defend the Authority of the Commission of Array.

For that Objection, That that Commission leaves Power to the Commissioners to Tax men *secundum Facultates*, and so make all mens Estates arbitrary:

The Answer is, that in levying of publick Aids upon mens Goods and Estates, which are variable, and probably cannot be certainly known by any but the Owners, it is impossible to avoid Discretion in the Assessments, for so it ever was, and ever will be. By this appears that the Votes of the two Houses against the Commission of Array, were against the Law.

The Death of the King dissolves the Parliament; if Kings should refer to the politick Capacity it would continue after his Death, 4. pars Inst. 46. which proves that the King cannot be said to be there when he is absent, as now he is: there is no *inter-regnum* in the Kingdom, the dissolution of the Parliament by his Death shews, that the Beginning and end thereof refers to the natural Person of the King, and therefore he may lawfully refuse the Propositions.

2 H. 5. Chap. 6. To the King only it belongs to make Leagues with Foreign Princes; This shews where the Supreme Power is.

8 H. 6. numb. 57. Rott. Parl. Cooks 4. part instit. 25. No Privilege of Parliament is grantable for Treason, Felony, or Breach of the Peace; if not to any one Member, not to two, not to ten, not to the major part, 19 H. 6. 62. The law is the Inheritance of the King and his People, by which they are ruled, King and People; And the People are by the Law bound to aid the King, and the King hath an Inheritance to hold Parliaments, and in the Aids granted by the Commonalty. If the major part of a Parliament commit Treason, they must not be Judges of it; for no man or body can be Judge in his own Cause, and as well as ten or any number may commit Treason, the greater number may as well.

32 H. 6. 13. Plowd. 334. The King by his Letters Patents may constitute a County Palatine and and grant Regal Rights, this shews where the Supreme power is.

17 Ed. 4. Rot. Parl. num. 39. No Privilege of Parliament is grantable for Treason, Felony, or Breach of the Peace; if not for one, not for two or more, or a major part.

The same persons must not be Judge and Party; a Corporate Body can commit no Treason, nor can Treason be committed against a Corporate Body, 21 E. 4. 13, and 14. but the persons of the men who make that Body may commit Treason, and commit it against the natural person of him, who to some purposes is a Body Corporate, but *quatenus corporate* no Treason can be committed by or against such a Body; that Body hath no Soul, no Life, and subsists only by the Fiction of the Law, and for that Reason the Law doth conclude as aforesaid; therefore the Statute of 25 Ed. 2. must be intended of the Kings natural Person conjoyned with the Politique, which are inseparable, and the Kings natural Person being at Holw. by, his Politique is there also, and not at Westminster; for the Politique and natural make one Body indivisible.

19 Ed. 4. 6. If all the People of England should break the League made with a Foreign Prince, without the Kings Consent, the League holds and is not broken; and therefore the representative Body is inferiour to his Majesties.

22 Ed. 4. Fitz. juridicti- on last. placite. The King may erect a Court of Common-pleas in what part of the Kingdom he pleaseth, by his Letter Patents; can the two Houses do the like?

1 Ed. 5. fol. 2. It cannot be said that the King doth wrong, declared by all the Judges and Serjeants at Law then there.

The Reason is, nothing can be done in this Commonwealth by the Kings grant, or any other Act of his, as to the Subjects Persons, Goods, Lands, or Liberties, but must be according to established Laws, which the Judges are sworn to observe, and deliver between the King and his People impartially, to Rich and Poor, High and Low; and therefore the Justices and the Ministers of Justice are to be questioned and punished if the Laws be violated: And no Reflection to be made on the King. All Counsellors and Judges for a year and three Moneths, until the Tumults began this Parliament were all left to the ordinary Course of Justice, what hath been done since is notorious.

For great Causes and Considerations an Act of Parliament was made for the Surety of the said Kings Person; if a Parliament were so tender of King Richard the Third, the Houses have greater Reason to care for the Preservation of his Majesty.

The Subjects are bound by their Allegiance to serve the King for the time being against every Rebellion, Power, and Might, reared against him within this Land, that it is against all Laws, Reason and good Conscience, if the King should happen to be vanquished, that for the said Deed and true Duty and Allegiance they should suffer in any thing, it is ordained they should not; and all Acts of Process of Law hereafter to be made to the contrary, are to be void. This Law is to be understood of the natural Person of the King, for his politick Capacity cannot be vanquished; nor War reared against it.

Relapsers are to have no Benefit of this Act, not otherwise, and only but

It is no Statute, if the King assent not to it, and he may dissent. This proves the Negative Voice.

The King hath full Power in all Causes to do Justice to all men. This is affirmed of the King, and not of the two Houses.

The Commons in Parliament acknowledge no Superior to the King, under God, the House of Commons confess the King to be above the representative Body of the Realm.

Of good Right and Equity the whole and sole Power of pardoning Treasons, Fellowies &c. belong to the King, as also to make all Justices of Oyer and Terminer, Judges, Justices of the Peace &c. This Law condemns the Practice of both Houses at this time.

The Kings Royal Assent to any Act of Parliament signed with his Hand, expressed in his Letters Patents under the great Seal, and declared to the Lords and Commons, shall be as effectual as if he assented in his own Person. A vain Act if the King be virtually in the Houses.

The King is the Head of the Parliament, the Lords the principal Members of the Body, the Commons the inferior Members, and so the Body is composed, therefore there is no more Parliament without a King, than there is a Body without a Head.

There is a Corporation by the Common Law, as the King, Lords, and Commons are a Corporation in Parliament, and therefore they are no Body without the King.

The Death of the King dischargeth all Mainprise to appear in any Court, or to keep the Peace.

The Death of the King discontinues all Pleas by the Common Law, which agreeeth not with the virtual Power insisted upon now.

Writs are discontinued by the Death of the King; Patents of Judges, Commission for Justice of the Peace, Sheriffs, Escheators, determined by his Death. Where is the virtual Power?

All Authority and Jurisdictions Spiritual and Temporal is derived from the King; therefore none from the Houses.

R. 3.
1 R. 3. cap. 15.

H. 7.
11. H. 7. cap. 1.

24 H. 8. cap. 12.
25 H. 8. cap. 21.

12 H. 7. 20.
H. 8.

27 H. 8. cap. 24.
Note.

33 H. 8. cap. 21.

14 H. 8. fol. 3.

24 Ed. 3. 48.
1 Ed. 4. 2.

2 H. 4. 8.
1 H. 7. 10.

1 Ed. 5. 1.

Ed. 6.
1 Ed. 6. cap. 7.

1 Ed. 6. cap. 24.

2,3 E. 6. cap. 2. His Majesties Subjects, according to their bounden Duties, ought to serve
 11 H. 7. cap. 1. the King in his Wars, of this side or beyond the Seas; beyond the Seas is to
Calvins Case
Sa. pars. Cook. be understood for Wages; This proves the Power of Wars and Preparation
 for War to be in the King.

5, 6 Ed. cap. 1. It is most necessary both for common Policy and Duty of the Subjects, to
 restrain all manner of shameful Slanders against their King, which when they
 be heard, cannot but be odible to his true and loving Subjects, upon whom
 dependeth the whole Unity and universal Weal of the Realm. This con-
 demns their continuing of the weekly Pamphlets who have been so foul-
 mouthed against his Majesty.

Q. Mary.
1 Mat. Pl. 2. The Punishment of all Offenders against the Laws, belongs to the King,
c. 2. and all Jurisdictions do, and of Right ought to belong to the King. This
 leaves all to his Majesty.

4,5 P. & M. 3. All Commissions to levy men for the War, are awarded by the King. The
Q. Eliz.
10 Eliz. Pl. 315 Power of War only belongs to the King.

*It belongs to the King to defend his People, and to provide Armes and
 Force. No Speech of the two Houses.*

*Roy ad sole Government de ses subjects. Corps natural le Roy & politique sont
 un corps.* That is, The King hath the sole Government of his Subjects, the
 Body Politick and the natural Body of the King make one Body, and not
 divers, and are inseparable and indivisibl.

Plowd. 234. The Body Natural and Politick make one Body, and are not to be seve-
242. 213. red: Legiance is due to the natural Body, and is due by Nature; Gods Law,
Calvins Case 7. and Mans Law, cannot be forfeited nor renounced by any Means, it is inse-
pars fol. 12. parable from the Person.

Plow. 934-243 Every Member of the House of Commons, at every Parliament, takes a
213. Calvins corporal Oath, That the King is the supreme and only Governour, in all
Cafe 7 pars fol. 12. Causes, in all his Dominions, otherwise he is no Member of that House; the
 words of the Law are, In all Causes, over all Persons.

*The said A&t of 1 Eliz. is but declarative of the ancient Law. Cawdries Case
 ibid.*

43 Eliz. The Earl of Essex, and others, assembled Multitudes of men to remove
3 pars infit. Councillors, adjudged Treason by all the Judges of England.

fol. 12. To depose the King or take him by Force, to imprison him until he hath
39 Eliz. yielded to certain Demands, adjudged Treason, and adjudged accordingly
Hil. 1 Jacobi in the Lord Cobham's Case.

39 Ed. Bradf. Arising to alter Religion established, or any Law, is Treason; so for ta-
Cafe fol. 9. king of the Kings Castles, Forts, Ports or Shipping. *Brook Treason 24. 3.*
& 10. *Ed. 4. Philip and Mary, Dyer, Staffords Case concerning Scarborough.*

By all the The Law makes not the Servant greater than the Master, nor the Subject
Judges of Eng- greater than the King, for that were to subvert Order and Measure.

land, ibid. *10 Eliz. Plow. 316.* The Law is not known but by Usage, and Usage proves the Law, and
10 Eliz. Plow. how Usage hath been is notoriously known.

319. *Eliz. James* The King is our only Rightful and Lawful Liege Lord and Sovereign,
1 Jaco. cap. 1. We do upon the Knees of our Hearts agnize constant Faith, Loyalty and
9 Ed. 4. fol. 8. Obedience to the King and his Royal Progeny, in this high Court of Par-
 liament, where all the Body of the Realm is either in Person or by Repre-
 sentation: We do acknowledge that the true and sincere Religion of the Church,
 is continued and established by the King, and do recognize, as we are bound
 by the Law of God and man, the Realm of England and Imperial Crown
 thereof doth belong to him by inherent Birth-right, and lawful and undoubt-
 ed Succession, and submit our selves and our Posterities for ever, until the
 last drop of our Blood be spent, to his Rule; and beseech the King to ac-
 cept the same as the first Fruits of our Loyalty and Faith to his Majesty and
 his Posterity for ever, and for that this A&t is not compleat nor perfect with-
 out

ou his Majesties assent, the same is humbly desired. This proves that the Houses are not above the King; that Kings have not their Titles to the Crown by the two Houses, but by inherent Birth-right, and that there can be no Statute without his express assent, and destroys the Chymæra of the Kings virtual being in the Houses.

To promise obedience to the *Pope*, or any other *State*, *Prince*, or *Potentate*, ^{3 Jac. cap. 4.} other than the King, his Heirs and Successors, is Treason. And therefore those ^{23 Eliz. cap. 1.} persons who call the Houses the Estates offend this Law.

Such Bills as his Majesty is bound in Conscience and Justice to pass, are no ^{King Charles} ^{Collection of} Law without his assent. ^{Ordinances,} ^{fol. 727. 1 pars.} ^{ibid. fol. 728.}

To design the ruine of the Kings person, or of Monarchy, is a monstrous and injurious charge.

Ubi Lex non distinguit, non est distinguendum, all the aforesaid Acts and ^{ibid. fol. 865.} Laws do evidently prove the Militia to belong to the King: that the King is not virtually in the two Houses: that the King is not considerable separately in relation to his politick capacity: that the King is not a person trusted with a *Power*, but that it is his inherent Birth-right, from God, Nature, and Law, and that he hath not his *Power* from the people. These Laws have none of those distinctions of *Natural* and *Politique*, *abstractum & concretum*, power and person. In *Cæsars time* this Island had Kings, and ever since, which is almost seventeen hundred years ago.

No King can be named, in any time made in this Kingdom by the people. A *Parliament* never made King, for they were Kings before. The *Parliaments* are summoned by the Kings Writs, which for Knights, Citizens and Burgeesses begins thus, *viz.*

Rex vic. Wilts Salutem. Quia Nos de avisamento & assensu Consilii nostri pro quibusd' arduis & urgentibus negotiis nos statum & defensionem Regni nostri Angl' & Ecclesie Anglicane concernentibus quoddam Parliamentum nostrum apud B. teneri ordinavimus & ibid' cum Prælatis magnatibus & proceribus dicti Regni nostri Colloquium habere & tractatum, ipsi Vicecom' præcipimus firmiter injungendo quod facta Proclamatione in proximo Comitatu tuo post receptionem ejus a' brevis, duos Milites gladiis cinctos, &c. eligi facias ad faciendum & consentiendum his quæ tunc ibidem de Communi Concilio nostro Angliae faventi Deo contigerit ordinari super negotiis antediicis ita quod pro defectu potestatis hujusmodi seu propter im providam electionem Milium, Civium, & Burgensium præd' dicta negotia nostra in secula non remanerent.

The King is *Principium, Caput & finis Parlamenti*, the Body makes not ^{4 Pars 1st.} the Head, nor that which is *posterior* that which is *prior*: *Concilium non est* ^{fol. 3, & 4.} *Præceptum, Conciliarii non sunt Præceptores*; for Council to compel a consent, hath not been heard of to this time in any Age, and the House of Commons by the Writ, are not called *ad Concilium*. The Writs to the twelve Judges, Kings Counsel, twelve Masters of the Chancery are *Concilium impensuri*, and so of the Peers. The Writs for the *Comminality, Ad faciendum & consentiendum*. Which shews what power the Representative Body hath; they have not power to give an Oath, neither do they claim it.

The King at all times, when there is no Parliament, and in Parliament is assisted with the Advice of the Judges of the Law, twelve in number; for *England* at least hath two Sergeants when fewest, an Attorney and Sollicitor, twelve Masters of the Chancery, his Council of State, consisting of some great Prelates and other great Personages versed in State Affairs; when they are fewest, to the number of twelve. All these persons are always of great Substance, which is not preserved but by the keeping of the Law; The Prelates versed in Divine Law, the other Grandees in Affairs of State and managery of Government; The Judges, Kings Sergeants, Attorney, Sollicitor, and Masters of the Chancery versed in the Law and Customes of the Realm: All sworne ^{The Oath of} ^{of Ed. 3. among} ^{that year.}

to serve the King and his people justly and truly, the King is also sworn to observe the Laws, and the Judges have it in their Oath a Clause, That they shall do Common Right to all the Kings people, according to the established Laws, notwithstanding any command of the King to the contrary, under the Great Seal or otherwise. The people are safe by the Laws in force without any new. The Law finding the King of this Realm assisted with so many great men of Conscience, Honour and Skill in the Rule of a Commonwealth, knowledge of the Laws, and bound by the High and Holy Bond of an Oath upon the Evangelists, settles among other Powers upon the King, a Power to refuse any Bill agreed upon by both Houses, and power to pardon all offences, to pass any Grants in his Minority, (There are many great persons living hold many a thousand pound a year by Patents from *Edward the Sixth*, passed when he was but ten years of Age) not to be bound to any Law to his prejudice, whereby he doth not bind himself, power of War and Peace, coyning of Money, making all Officers, &c. The Law, for the Reasons aforesaid, hath approved these *Powers* to be unquestionable in the King, and all Kings have enjoyed them till the third of *Nov. 1640*.

It will be said notwithstanding all this Fence about the Laws, the Laws have been violated, and therefore the said *Powers* must not hold, the two Houses will Remedy this.

The Answer to this is evident: There is no time past, nor time present, nor will there be time to come, so long as men manage the Law, but the Laws will be broken more or less, as appears by the Story of every Age. All the pretended violations of this Time were remedied by Acts, to which the King consented before his departure the tenth of *Jan. 1641*. being then driven away by Tumults. And the Houses for a Year and almost three Months, from the third of *Nov. 1640*, to the tenth of *January, 1641*. as aforesaid, being a Year and almost three Months, had Time and Liberty to question all those persons who were either Causes or Instruments of the violation of any of the Laws.

Examine how both Houses remedied them in former times. First, touching Religion, What hath been done this way? Both Houses in *Henry the Eighth's* time tended to him a Bill to be passed, called commonly called *The Bill of the Six Articles*: this was conceived by them to be a just and necessary Bill: had not *Henry the Eighth* done well to have refused the passing of this Bill? Both Houses tended a Bill to him to take the *Reading of the Scriptures from most of the Laity*: had not King *H. the 8th.* deserved much praise to reject this Bill? In *Queen Mary's* time both Houses exhibited a Bill to her to introduce the *Pope's Power and the Roman Religion*; had not *Queen Mary* done well to have refused this Bill? Many such Instances may be given. The two Houses now at *Westminster* I am sure will not deny but the refusal of such Bills had been just, the King being assisted as aforesaid, and why not so in these Times?

For the Civil Government, what a Bill did both Houses present to *Richard the Third*, to make good his Title to the Crown; had it not been great honor to him to have rejected it? What Bills were exhibited to *Henry the Eighth*, by both Houses for bastardizing of his Daughter *Elizabeth*, a Queen of renowned Memory, to settle the Crown of this Realm, for default of Issue of his Body, upon such persons as he should declare by his Letters Patents, or his last Will, and many more of the like? Had not this refusal of passing such Bills magnified his Virtue, and rendered him to posterity in a different Character from what he now hath?

And by the Experience of all Times, and the Consideration of Humane Frailty this Conclusion is manifestly deduced, that it is not possible to keep men at all times (be they the Houses, or the King and his Council) but there will be sometimes some deviation from the Laws, and therefore the constant and

and certain *Powers* fixed by the ancient Law must not be made void: And the Kings Ministers the Laws do punish where the Law is transgressed, and they only ought to suffer for the same.

In this Parliament the Houses exhibited a Bill to take away the Suffrages of the Bishops in the upper House of Parliament, and have since agreed there shall be no more Bishops at all, might not the King if he had so pleased have answered this Bill with *Le Roy's avisera, or ne veult*: it was against *Magna Charta, Articuli Cleri* and many other Acts of Parliament. And might have farther given these Reasons if it had so pleased him for the same: first that this Bill destroys the Writ whereby they are made two Houses of Parliament, the King in the Writ to the Lords, being Cum prelatis Colloquium habere; secondly they have been in all Parliaments since we had any, and voted, but in such wherein they themselves were concerned: And there have been Bishops here since we were Christians: and the fundamental Law of the Kingdom approves of them: if any of them were conceived offensive; they were left to Justice, and his Majesty would put in In-offencive men in their Places: but since his Majesty hath passed the Bill for taking away their Votes in Parliament, it is a Law that binds us so far.

Upon the whole matter the Law hath notably determined, that Bills agreed by both Houses, pretended to be for the Publick Good, are to be judged by the King, for in all Kings Reigns Bills have been preferred by both Houses, which alwayes are pretended to be for the publick Good, and many times are not, and were rejected *Roy's avisera, or Roy ne veult*.

This Parliament begun the third of November 1640 before that time in all the Kings Reign no armed Power did force any of the People to do any thing against the Law: what was done, was by his Judges, Officers, Referees and Ministers from that time untill the tenth of January 1641 (when the King went from *London* to avoid the Danger of frequent *Tumults*, being a Year and three Moneths, Privy Councillors and all his Justices and Ministers were left to the Justice of the Law, there wanted no time to punish punishable men.

The Sphere of the house of Commons is to represent the Grievances of the Country, to grant Aids for the King upon all fit Occasions extraordinary, to assent to the making or abrogating of Laws: The Orbe of the House of Lords to reform erroneous Judgments given in the Kings Bench, to redrefs the Declaies of Courts of Justice, to receive all Petitions, to advise his Majesty with their Councell, to have their Votes in making or abrogating of Laws, and to propose for the common Good, what they conceive meet.

Lex non cogit ad impossibilia, Subjects are not to expect from Kings impossible things, so many Judges, Councillors, Sheriffs, Justices of the Peace, Commissioners, Ministers of State, that the King should over-look them all cannot be, it is impossible.

The King is virtually in his ordinary Courts of Justice; so long as they continue his Courts: their Charge is to administer the Laws in Being, and not to delay, defer, or sell Justice for any Commandment of the King. We have Laws enough *instrumenta boni seculi sunt boni viri*, good Ministers, as Judges and Officers, are many times wanting, the Houses propose new Laws, or Abrogation of the old; both induce Novelty: the Law for the Reasons aforesaid, makes the King the only Judge, who is assisted therein by a great number of Grave, Learned and Prudent men, as aforesaid.

For the Considerations aforesaid the Kings Party adhered to him, the Law of the Land is their Birth-right, their Guide, no Offence is committed where that it is not violated: they found the Commission of Array warranted by the Law; they found the King in this Parliament to have quitted the Ship-Money, Knighthood-money, seven Courts of Justice, consented to a trien-

nial Parliament, settled the Forest Bounds, took away the Clerk of the Market of the Household, trusted the House with the Navy, passed an Act not to dissolve this Parliament without the Houses Assent; no People in the World so free if they could have been content with Laws, Oaths, and Reasons, and nothing more could or can be devised to secure us, heither hath been in any time.

Notwithstanding all this we found the King driven from *London* by frequent Tumults, that two thirds and more of the Lords had dissentered that House, for the same Cause, and the greater part of the House of Commons left that house also for the same Reason: new men chosen in their Places, against Law, by the pretended Warrant of a counterfeit Seal; and in the Kings name against his Consent, levying War against him, and seizing his Ports, Forts, Magazines and Revenue, and converting them to his Destruction and the Subversion of the Law and Land, laying Taxes on the People never heard of before in this Land; devised new Oaths to oppose Forces raised by the King, not to adhere to him, but to them in this War which they call the Negative Oath, and the Vow and Covenant.

By several ways never used in this Kingdom they have raised Monies to foment this War, and especially to inrich some among them; namely, first Excise; secondly, Contributions; thirdly, Sequestrations; fourthly, first Parts; fifthly, twentieth Parts; sixthly, Meal-Money; seventhly, Sale of Plundered Goods; eighthly, Loanes; ninthly, Benevolences; tenthly, Collections upon their Fast-days; eleventhly, new Impositions upon Marchandizes; twelfthly, Guards maintained upon the Charge of private men; thirteenthly, fifty Subsidies at one time; fourteenthly, Compositions with such as they call Delinquents; fifteenthly, Sale of Bishops Lands &c.

From the Kings Party Means of Subsistance are taken; before any Indictment their Lands seised, their Goods taken, the Law allows a Traytor or Fellow attainted, *Necessaria sibi & familia sue in vicu & vestitu*, where is the Covenant? Where is the Petition of Right? Where is the Liberty of the Subject?

1 R. 3. cap. 3.
B. 1. 3. 8.
Stanford. 192.
Sir G. Fleet-
woods Case. 8.
pars Cook. 7 H.
4. last Leaf.

First, We have aided the King in this War contrary to the Negative Oath and other Votes, Our Warrant is the twenty fifth of *Ed. 3.* the second Chapter, and the said Resolutions of all the Judges.

Secondly, We have maintained the Commission of Array by the Kings Command, contrary to their Votes. We are warranted by the Statute of the fifth of *Hen. 4.* and the Judgment of Sir *Edward Cook*, the Oracle of the Law as they call him.

Thirdly, We maintained Arch-bishops and Bishops, whom they would suppress. Our Warrant is *Magna Charta*, and many Statutes more.

Fourthly, We have maintained the Book of Common-Prayer, they suppress it. Our Warrant is five Acts of Parliament in *Edward the Sixth* and *Queen Elizabeths* time, 5 *Pasche*. 35 *Eliz.* *inter placita Corona in Banco Regis*, New Book of Entries fol. 252. *Penry* for publishing two scandalous Libels against the Church Government, was indicted, arraigned, attainted and executed at *Tyburn*.

Fifthly, We maintained the Militia of the Kingdom to belong to the King, they the contrary. Our Warrant is the Statute of the seventh of *Edward the first* and many Statutes since, the Practise of all times, and the Custom of the Realm.

Sixthly, We maintained the counterfeiting of the great Seal to be high Treason, and so of the Usurpation of the Kings Forts, Ports, Shipping, Castles and his Revenue, and the coining of Money, against them. We have our Warrant by the said Statute of the twenty fifth of *Edward the third*, Chapter the second, and divers others since, and the Practise of all times.

Seventh-

Seventhly, We maintain that the King is the only supreme Goverour in all Causes. They that his Majesty is to be governed by them. Our Warrant is the Statutes of the first of Q. Elizabeth, Chapter the first, and the fifth of Q. Elizabeth Chapter the first.

Eighthly, We maintain that the King is King by an inherent Birth-right, by Nature, by Gods Law, and by the Law of the Land. They say his Kingly Right is an Office upon Trust. Our Warrant is the Statute of the first of King James, Chapter the first; And the Resolution of all the Judges of England in *Calvins Case*.

Ninthly, We maintain that the Politick Capacity is not to be severed from the natural. They hold the contrary. Our Warrant is two Statutes (viz.) *Exilium Hugonis* in Edward the Seconds time, and the first of Ed. 3, chap. 2. and their Oracle who hath published it to Posterity, that it is damnable, detestable and execrable Treason, *Calvins Case pars 7. fol. 11.*

Tenthly, We maintain that who aids the King at home or abroad ought not to be molested or questioned for the same. They hold and practise the contrary. Our Warrant is the Statute of the eleventh of Henry the seventh, Chapter the first.

Eleventhly, We maintain that the King hath Power to disassent to any Bill agreed by the two Houses; which they deny. Our Warrant is the Statute of the Second of Henry the fifth, and the Practise of all times, the first of King Charles, Chapter the seventh, the first of King James, cap. 1.

Twelfthly, We maintain that Parliaments ought to be holden in a grave and peaceable manner without Tumults. They allowed Multitudes of the meaner sort of People to come to *Westminster* to cry for Justice when they could not have their Will, and keep guards of armed men to wait upon them. Our Warrant is the Statute of the seventh of Edward the second and their Oracle.

Thirteenthly, We maintain that there is no State within this Kingdom but the Kings Majesty, and that to adhere to any other State within this Kingdom is high Treason. Our Warrant is the Statute of the third of King James, Chapter the fourth, and the 23th of Eliz. Chapter the first.

Fourteenthly, We maintain that to leavy a War, to remove Councillors, to alter Religion, or any Law established, is high Treason. They hold the contrary. Our Warrant is, the Resolutions of all the Judges of England in Queen Elizabeths time, and their Oracle agrees with the same.

Fifteenthly, We maintain that no men should be imprisoned, put out of his Lands, but by due Course of Law, and that no man ought to be adjudged to Death but by the Law established, the Customes of the Realm, or by Act of Parliament. They practise the contrary in *London, Bristol, Kent, &c.* Our Warrant is *Magna Charta*, Chapter the twenty ninth, the *Petition of Right*, the third of King Charles, and divers Laws there mentioned.

We of the Kings Party did and do detest Monopolies, and Ship-money, and all the Grievances of the People as much as any men living; we do well know that our Estates, Lives, and Fortunes are preserved by the Laws, and that the King is bound by his Laws; we love Parliaments: if the Kings Judges, Counsell or Ministers have done amiss, they had from the third of November 1540 to the tenth of January, 1641. time to punish them, being all left to Justice; Where is the Kings Fault?

The Law saith the King can do no wrong, that he is *medius regni, pater patriae, sponsus regni, qui per annum* espoused to his Realm at his Coronation; The King is Gods Lieutenant, and is not able to do an unjust thing. These are the words of the Law.

One great matter is pretended that the People are not sure to enjoy the Acts passed this Parliament, a succeeding Parliament may repeal them;

The Objection is very weak; a Parliament succeeding to that may repeal that repealing Parliament. That Fear is endles and temedyleſs, for it is the Essence of Parliaments being compleat and as they ought to be, of Head and all the Members, to have Power over Parliaments before; Parliaments are as the time are; if a turbulent Faction prevails, the Parliaments are wicked, as appears by the Examples recited before of extream wicked Parliaments: if the times be sober and modest, prudent and not bluffed; the Parliaments are Right, Good and Honourable, and they are good Medicines and Salves, but in this Parliament *excessit Medicina modum.*

In this Caufe and War between the Kings Majelty and the two Houses at *Westminster*, what Guide had the Subjects of the Land to direct them, but the Laws? What means could they use to discern what to follow, what to avoid, but the Laws? The King declares it Treason to adhere to the Houses in this War: The Houses declare it Treason to adhere to the King in this War. The Subjects for a great and considerable part of them (Treason being such a Crime as forfeits Life and Estate, and also renders a mans Posterity base, beggarly and infamous) look upon the Laws, and find the Letter of the Law requires them to alſit the King, as before is manifested. Wasever Subject criminally puniſht in any Age or Nation for his Pursuit of what the Letter of the Law commands?

The Subjects of the Kingdom find the Distinſhion and Interpretation now put upon the Laws of *Abſtratum & Concretum*, Power and Person, Body Politick, and Natural, personal Preſence and virtual, to have been condemned by the Law: And ſo the Kings Party hath both the Letter of the Law and the Interpretation of the Letter cleared to their Judgments, whereby they might evidently perceive what ſide to adhere to. What Satisfaction could Modest, Peaceable, and Loyal men more deſire?

A verbo legis in criminibus & penis non eſt recedendum, hath been an approved Maxim of Law in all Ages and Times. If the King be King, and remain in his Kingly Office (as they call it,) then all the ſaid Laws are againſt them without Colour: they ſay the ſaid Laws relate to him in his Office, they cannot ſay otherwife, Commissions and Pardon in the Kings Name, and the Person of the King and his Body Politick cannot, nor ought to be leſſened as hath been before declared: and the Members of both Houles have sworn conſtantly in this Parliament, That the King is the only ſupreme Governoſr in all Caufes over all Persons at this preſent time.

For that of verbal or personal Commands of the King, which is objected, We affirm few things to be ſubject thereto by the Law: But his Majeltyes Command under his great Seal, which in this War hath been uſed by the Kings Command for his Commission to levy and array men, that is no personal Command (which the Law in ſome Caſes diſallows) but that is ſuch a Command ſo made, as all men hold their Lands by, who hold by Patents; All Corporations have their Charters which hold by Charters, and all Judges and Officers their Places and Callings.

Obj. It is objected, The King cannot ſuppreſs his Courts of Justice, and that this War tended to their Suppreſſion.

Sol. The Aneſwer is, the King cannot, nor ought to ſuppreſs Justice or his Courts of Justice, nor ever did: But Courts of Justice by *abuſuſ or non uſe* ceafe to be Courts of Justice; when Judges are made and Proceedings in thole Courts holden by others than Judges made by the Kings, and againſt his Command under the great Seal, and his Majelty is not obeyed, but the Votes of the Houles; they ceafe to be the Kings Courts and are become the Courts of the Houles, and his Judges breaking that Condition in Law, of Trust and Loyalty, implied in their Patents, are no longer his Judges; they obey and exercise their Places by virtue of Writs and Proceedings under a coun-

Coll. of Ordinances 177.

5 Eliz. cap. 1.
1 Eliz. cap. 1.

7 pars. The

Earl of West-

merſands Caſe.

1 Eliz. Dm.

163. 7 pars.

Caſe.

The Caſe of

Discontinu-

ance of Pro-

ceſſ.

courteſe Seal. The King only can make Judges, the twenty seventh of Henry the Eighth, Chapter the twenty fourth, *Judges of the Pleas, &c.* twenty eighth of Henry the Eighth, *Dir. the eleventh, the King's Patent makes Judges, the Chief Justice of the King's Bench, is made by the King's Writ only, of all the Judges.*

The Great Seal is the Key of the Kingdom, and meet it is that the King should have the Key of his Kingdom about him; 2. pars. *Infat. 552*, which confutes their Saying, that the King got the Seal away surreptitiously.

The King, and he only, may remove his Courts from Westminster into some other place; at York the Terms were kept for seven years, in Edward the First's time: But for the Court of Common-pleas, the place must be certain, for the King's Bench and Chancery, the King by the Law may command them to attend his Person always if it seem to meet unto him: but the removing of the Common-pleas must be to a place certain, and so notified to the People.

All the Books of Law in all times agree, that the King may grant *Concurrence* of all Pleas at his pleasure within any Country or Precinct, to be holden there only, and remove the Courts from Westminster to some other place (for the Common-pleas, the place must be certain and is notified to the people) and adjourn the Terms as he sees cause. *All which the Two Houses have violated. Plebs sine lege ruit.*

Some seeming Objections of Mr. Prynne's, scattered in divers Books, answered, and the Truth thereby more fully cleared.

1. Obj. The first of Henry the Fourth, reviveth the Statute of the Eleventh of Richard the Second, and repeals to the 12 R. 2. whereby certain Persons were declared Traytors to the King and Kingdom, being of the King's Party.

Sol. True, but note, the eleventh of Richard the Second, a Parliament beset with 40000 men, and the King assents to it, to an Act, and besides the first of Henry the Fourth, declared, that the Persons mentioned in the Act of the eleventh of Richard the Second, being but against a few private men shall not be drawn into Example, and that no Treason should be bat-fach as the twenty fifth of Edward the Third declares. All the late Acts passed by the King and the three Estates, not to be drawn into Example in a tumultuous time, by a besieged Parliament with an Army, and the Con-firmer of Henry the Fourth, being an Usurper, makes that Act of the first of Henry the Fourth, to secure himself. Also what is this to the Votes of the two Houses only at this time.

2. Obj. The Court of Parliament is above the King, for it may avoid his Charters, Commissions, &c. granted against the Law.

Sol. And the Law is above the King?

By the same reason you may say that the Courts of Chancery, or any of the Courts of Law at Westminster, are above the King, for they make of no effect the King's Charters, which are passed against the Law. And the King is subject to Law, and sworn to maintain it. Again it is no Parliament without the King, and the King is the Head thereof, he is *Principium Regni, & Finis* of a Parliament, as *Mediæ Veteris Parliament. had it, and two Houses only, want principium Caput & Pons of a Parliament, and it is a sorry Parliament that wants all these.* And therefore to say that Parliaments are above the King, is to say that the King is above himself.

3. Obj. The Parliament can enlarge the King's Prerogative, therefore it is above him.

Sol. If the King assent, otherwise not; and then it is an Act of Parliament, otherwise no Act.

4. Obj. Bracton saith, God, the Law, and the King's Court, viz. the Earls and Barons are above the King, viz. in Parliament, as Mr. Prynne expounds it

*Articuli super
Chartas cap. 5.*

Britton fol. 23.

*34. Affl. pl.
24. 22 Ed. 4.
Fitz. jurisdicti-
on last placit.*

*5 H. 7. 9.
6 Eliz. Dir.*

226.

*edictum
potest
de
dictum*

9 Ed. 4. fol. 80

.11.4.13.2

Sol.

Sol. Where is then the House of Commons? Indeed, take God, the Law, and Earls and Barons together, it is true; but to affirm, that the Earls and Barons in Parliament are above the King (the King being the Head of the Parliament, and they one of the Members) how an Inferior Member is above the Head is hard to conceive; besides, that position destroys all Mr. *Prynn's* Discourse, who attributes so much to the House of Commons.

5. Obj. The King is but one of the three Estates of Parliament, and two are greater than one; therefore above.

Sol. The Legs, Arms, and Trunk of the Body are greater than the Head, and yet not above, nor with Life without it; the Argument holds for quantity, but not for quality, and in truth the King is none of the three Estates, but above them all; the three Estates are the Lords Spiritual, the Lords Temporal, and the Commons. *Cooke* their Oracle in his *Capiter of Parliaments*, *Folio* the first.

6. Obj. In Corporations, the greater number of Voices make all the *Acts* of the Corporation valid; therefore so in Parliament.

Sol. By this reason the King's Assent is needless and to no end, and all the *Acts* of Parliament formerly mentioned, and Law Books have quite mistaken the matter, which with unanimous Voice requires the King's Assent, as necessary. Besides, the Corporations are so constituted by the Kings Charters, that the greater number of Votes shall make their *Acts* valid.

7. Obj. The King, as King, is present in his Parliament, as well as in all other his Courts of Justice, howbeit he is not there.

Sol. In his other Courts of Justice he hath no Voice, he is none of the Judges; in the Parliament he hath. If his Presence be not necessary, his Voice is not, nor his Assent.

8. Obj. The Original prime Legislative power of making Laws to bind the Subjects and their Posterity, rests not in the King, but in the Kingdom, and Parliament which represents it.

Sol. Mr. *Prynn* in the same leaf affirms, and truly, that the King's Assent is generally requisite to pass Laws and ratifie them; the King is the Head of the Kingdom and Parliament, how then can a Body act without a Head?

9. Obj. A major part of a Corporation binds, therefore the major part in Parliament, and so of By-Laws.

Sol. The Corporation is so bound, either by the King's Charters, or by Prescription, which sometimes had the King's Concession; but Prescription, and Law, and Practice always left the King a Negative Voice.

10. Obj. The King cannot alter the Bills presented to him by both Houses.

Sol. True, but the King may refuse them.

11. Obj. Acts of Parliament and Laws ministered in the Reigns of *Usurpers*, bind Rightful Kings.

Sol. What is this to prove the two Houses power only, which is the Question? A King *de facto* must be obeyed by them who submitted to him, and they are his Subjects by their Submission, and not Subjects *de facto* to the true King, and such being Traytors and Rebels to the Regent King (having renounced the true King) when the Lawful King is restored, may be punished by him for their Treason against the *Usurper*. But here is a King still in both cases, and the proceedings at Law holds; the Judges having their Patents from the being Kings, in the Reigns of Kings, *de facto* or *de jure*, for all Kings are bound and sworn to observe the Laws.

12. Obj. A King dies without Heir, is an *Infant*, *non Compos mentis &c.* the two Houses may establish Laws.

There

Sol. There is no *Inter regnum* in *England*, as appears by our Books of Law, and therefore the dying without *Herr* is a vain supposition, and by their principle he is considerable in his pollick Capacity, which cannot die at all. The Protector assisted by the Councell of the King at Law, his twelve Judges, the Councell of State, his Attorney, Solicitor, and two Serjeants at Law, his twelve Masters of the Chancery, hath in the Kings behalfe, and ever had a Negative Voice. But what is this to the present question? We have a King of full Age, of great Wisdom and Judgment: The power of the two Houses in such a case to be over the King cannot be shewn.

13. Obj. The King cannot dissent to publick and necessary Bills for the Common Good. go.

Sol. Nor ever did good King; but who shall be Judge, whether they be publick and necessary? The major part in either of the Houses for passing of Bills so pretended, may be but one or two Voices or very few; and perhaps of no Judicious men. Is it not then fitter and more agreeable to reason, That his Majesty, and Councell of State, his twelve Judges, his Serjeants, Attorney and Solicitor, twelve Masters of the Chancery should judge of the contentienty and benefit of such Bills for the publick Good, rather than a Minor (of which sort there may be in the House) or a weak man, or a few, who oftentimes carry it by making the Major part, which involves the consent of all? Let reason determine.

14. Obj. The Kings of *England* have been Elective, and the King by his Coronation Oath, is bound to maintain *Justas leges & iustitudines quas vulgas elegit*. go.

Sol. Popery hath been in the Kingdom, and therefore to continue it still, will not be taken for a good Argument; when things are settled for many Ages, to look back to times of Confusion, is to destroy all repose. The Act of Parliament of the first of King James, Chapter the first, and all our extant Laws say, that the King's Office is an Heritage inherent in the Blood of our King's and their Birth-right.

And Usurpers that come in by the consent of the People, are Kings *de facto*, ^{1 Ed. 4. cap. 1.} *de jure*, as appears by the Acts of Parliament declaring them so. And by all our Law-Books, and the Fundamental Constitution of the Land, Regal Pewer is Hereditary and not Elective.

For the words *vulgas elegit* if *vulgas* be applied to the House of Commons, they of themselves can make no Laws. The Peers were never yet termed *vulgas*, but allowing they be so called, the Laws to be made must be just, and who is fit to judge thereof is before made evident.

15. Obj. Customs cannot refer to future time, and both are coupled, Laws and Customs.

Princes have been deposed, and may be by the two Houses. go.

Sol. The Deposers were Traitors, as appears by the Resolutions of all the Judges of *England*: Coke Chapter, Treason in the second part of the Institutes. And never was King deposed but in tumultuous and mad times, and by the power of Armies, and they who were to be the Succeeding Kings iff the Head of them, as Ed. 3. and H.

16. Obj. The Appeal to the Parliament for Errors in Judgments in all Courts, is frequent.

Sol. This is only to the House of Lords, and that is not the Parliament, the House of Commons have nothing to do therewith, and in the House of Peers, if a Writ of Error be brought to reverse any Judgment, there is first a Petition to the King for the allowance thereof, and the reason of the Law in this Case is, for that the Judges of the Land all of them, the King's Council, and twelve Masters of the Chancery assist there, by whose advice erroneous Judgments are reedressed.

The Parliaments have determined of the Rights of Kings, as in *Henry the Sixths* time, and others, and Parliaments have bound the Succession of Kings, as appears by the Statute of the thirteenth of *Q. Eliz.* Chapter the first; and the Disent of the Crown is guided rather by a Parliamentary Title than by Common Law, go.

Sol. If this Objection be true, That the Title to the Crown is by Parliament, then we had no Usurpers, for they all had Parliaments to back them; yea *Richard*, the Third, that Monster, all our Books of Law say they have the Crown by Disent, and the Statutes of the Land declare, that they have the same by inherent Birth-right. And the Statute of the thirteenth of *Elizabeth*, the first Chapter, was made to secure Queen *Elizabeth*, against the Queen of *Scots*, then in the Kingdom, claiming the Crown of *England*, and having many adherents. And that Statute to that end affirms no such Power in the two Houses (which is the Question) but in Queen *Elizabeth*, and the two Houses, which makes against the Pretence of this time.

Mr. *Pryn*, fol. 104. of his Book intituled The Parliaments supreme Power, &c. Objecking the Statute of the first of Queen *Elizabeth*, and his own Oath, That the King is the only supreme Goverour of this Realm. Answers; The Parliament is the supreme Power, and the King supreme Goverour. And yet there he allows him a Negative Voice, And fol. 107. confesseth that Acts of Parliament, translated the Crown from the right Heirs at Common-Law, to others who had no good Title; then the Parliamentary Title makes not the King; so powerful is Truth, that it escapes from a man unawares: To make a Distinction between Supreme Goverour, and Supreme Power is very strange; for who can govern without Power?

Vide Speede.
645. 4 pars In-
fus. 27, &c. 28.

The King assembles the Parliament by his Writ; Adjourns, Prorogues and Dissolves the Parliament, by the Law at his Pleasure, as is evident by constant Practice: the House of Commons never sat after an Adjournment of the Parliament by the Kings Command. Where is the Supreme Power?

18 Obj. The King, by his Oath, is Bound to deny no man Right, much less his Parliament; to agree to all just and necessary Laws proposed by them to the King. This is the Substance of the Discourse against the Kings Negative Voice.

Sol. The King is so bound as is set down in the Objection, but who shall judge whether the Bill proposed be just and necessary: For all that they do propose are so pretended and carried in either House, sometimes by one or two Voices; or some few as aforesaid; and certainly as hath been shewn, the King, his Council of State, his Judges, Serjeants, Attorney, Sollicitor, and twelve Masters of the Chancery can better judge of them, than two or three or few more.

Mr. *Pryn* fol. 45. In his Book of the Parliaments interest to nominate Privy-Councillors, &c. calleth the Opinion of the *Spencers* to divide the Person of the King from his Crown, a strange Opinion, and cites *Calvins Case*, but leaves out the Conclusions therein mentioned, fol. 11. Master *Pryn* saith there, but let this Opinion be what it will; without the Kings Grace and Pardon it will go very far, and two Acts of Parliament there mentioned are beyond an Opinion. And in his Book of the opening of the Great Seal fol. 17. The Parliament hath no Jurisdiction to use the great-Seal for Pardon general or particular. Where is the Supreme Power?

19 Obj. Master *Pryn* (opening of the Seal) Page 19 saith, The Noblemen and State, the Day after the Funeral of King *Henry the third* (King *Edward* the first his Son being in the holy Land,) made a new Great-Seal, and Keepers of the same: And in *Henry the sixths* time, in the first year of his Reign, the like was done in Parliament.

Sol.

Sol. *A fact ad jus*, is no good Argument, for that in *Edw.* the First's time, it was no *Parliament*; for *King Henry the Third* was dead, which dissolved the *Parliament*, if called in his time, and it could be no *Parliament* of *Edward* the First's Time, for no *Writ* issued to summon a *Parliament* in his name, nor could Issue but under that new *Seal*, it was so suddenly done after *Henry* the Third's Death, *King Edward* the first being then in the *Holy-Land*, it was the first year of his Reign, and no *Parliament* was held that year, nor the second year of his Reign. The first *Parliament* that was in his Reign, was in the third year of his Reign, as appears by the Printed *Acts*. Also the making of that *Seal*, was by some *Lords* then present: What hand had the *Commons* in it? Concerning the *Seal* made in *Henry* the Sixth's time, the *Protector* was *Vice-roy*, according to the Course of *Law*, and so the making of that *Seal*, was by the *Protector* in the King's Name; and that *Protector* *Humphrey Duke of Gloucester*, as *Protector* in the King's Name, summoned that *Parliament*, and was *Protector* made by the *Lords*, and not in *Parliament*, as appeareth plainly; for that *Parliament* was in the first of *Henry* the Sixth, and the first holden in his time, and *Power* given by *Commission* to the said *Duke*, then *Protector*, to summon that *Parliament*. *Pryn ibid. fol. 19.* But the new *Counterfeit Seal* was made when the King was at *Oxford* in his own *Kingdom*, and not in the *Holy-Land*.

20. *Obj.* Mr. *Prynn* in his *Book of the two Houses Power to impose Taxes, restrain Malignants against any Habeas Corpus, &c.* saith, that the *Parliament* is above *Magna Charta*, and *Folio 15. ibid.* The *Parliament* hath *Power* over *Magna Charta*, to repeal the same when there is *Cause*.

Sol. This Argument supposeth, that they have the King's *Power*; which hath appeared formerly they have not. But suppose they had, *Magna Charta* contains many moral *Laws*, which by the *Law of the Land* a *Parliament* cannot alter. 21 *Henry 7. 2. Doctor & Student, 2 Dialogue.* For Example, it saith *Cap. 18.* Justice shall not be sold, delayed nor denied to any man; but by this Argument the *Parliament* may make *Laws* to delay, deny, and to sell *Justice*, which surely is a very ill position to maintain.

What they would have, doth now by the *Propositions* sent to *Newcastle* to his *Majesty*, appear; whereby they would have him divest himself, and settle in them all his *Kingly power by Sea and Land*; and of themselves to have *power* without him, to lay upon the *People of this Land*, what *Taxes* they think meet, to abolish the *Common-prayer Book*, to abolish *Episcopacy*, and to introduce a *Church-Government* not yet agreed, but such as they shall agree on.

His *Majesty* finding a prevailing *Party* in both *Houses* to steer this *Course*, and being chased away with *Tumults* from *London*, leaves the *Houses* for these Reasons :

(viz.)

First, Because to alter the *Government for Religion*, is against the King's *Oath*.

Secondly, Against their *Oaths*: For every of them hath sworn in this *Parliament*, That His *Majesty* is the only *Supreme Governour* in all *Causes Ecclesiastical*, and over all *persons*.

Thirdly, This course is against *Magna Charta*, the first Chapter and the last. *Salve suis Episcopis omnes Libertates sue*, Confirmed by thirty two *Acts of Parliament*; And in the two and fortieth of *Edward the Third*, in the first Chapter enacts, If any *Statute* be made to the contrary, it shall be

be holden for none, and so it is for Judgments at Law, in the twenty fifth of Edward the first, Chapter the first and the second, The great Charter is declared to be the Common-Law of the Land.

Fourthly, they endeavour to take away by their Propositions, the Government of Bishops, which is as ancient as Christianity in this Land, and the Book of Common-Prayer, settled by five Acts of Parliament, and compiled by the Reformers and Martyrs, and practised in the time of four Princes.

Fifthly, These Propositions taking away from his Majesty all his Power by Land and Sea, rob him of that which all his Ancestors Kings of this Realm have enjoyed. That Enjoyment and Usage makes the Law, and a Right, by the same to his Majesty. They are against their own Protestation made this Parliament (viz.) to maintain his Royal Person, Honour and Estate; they are against their Covenant, which doth say that they will not diminish his just Power and Greatness.

For these Reasons his Majesty hath left them, and as is believed will refuse to agree to the said Propositions, as by the Fundamental Law of the Land he may (having a Negative Voice) to any Bills proposed.

The Result of all is, upon the whole matter. That the King thus leaving of the Houses, and his denial to pass the said Propositions, are so far from making him a Tyrant, or not in a Condition to govern, at the present, That thereby he is rendered a Just, Magnanimous and Pious Prince, so that by this it appears clearly to whom the Miseries of these times are to be imputed. The Remedy for all is, an Act of Oblivion and a General Pardon.

God save the KING.

FINIS.

(act)

Every Person of this Country for Religion, is saying the King's
Secondly, Every Person Oaths: for every of these persons know in this Place
Inuentum. That the Prelate is the only Supreme Government in the Church Ec-
clesiastical and other the Prelates.
Thirdly, This Office is setting Ministers Chancery to the Prelates and the
The State of the Prelates, and other Prelates, the Government by Prelates the
Age of Parliament. And in the two and twenty of February the King, in
the first Chapter change. It was a Statute to the contrary, in the

